

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Call to Order: By **CHAIRMAN BILL GLASER**, on January 15, 2001 at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Bill Glaser, Chairman (R)
Sen. Jack Wells, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. John C. Bohlinger (R)
Sen. Edward Butcher (R)
Sen. John Cobb (R)
Sen. Jon Ellingson (D)
Sen. Jim Elliott (D)
Sen. Alvin Ellis Jr. (R)
Sen. Sam Kitzenberg (R)
Sen. Don Ryan (D)
Sen. Debbie Shea (D)
Sen. Mike Sprague (R)
Sen. Mignon Waterman (D)

Members Excused: None.

Members Absent: None.

Staff Present: Linda Ashworth, Committee Secretary
Eddy McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 139, 1/9/2001; SB 140,
1/9/2001; SB 231, 1/11/2001
Executive Action:

HEARING ON SB 139

Sponsor: SEN. JACK WELLS, SD 14, GALLATIN COUNTY

Proponents: **Harris Himes, Self**
 Mark Mozer, Self
 Jennifer Coleman
 Julie Millam, Christian Coalition
 Karen Pfaehler, Self
 Dallas Erickson, Montana Citizens for Decency
 Through Law

Opponents: **Dr. Karen Strege, Director of the Montana State**
 Library
 Lorraine Biggs-Gallik, Anaconda Library Board
 Paul V. Beausoleil, Anaconda Hearst Free Library
 Jim Heckel, Great Falls Public Library
 Lois Fitzpatrick, Montana Library Association
 Beth Brenneman, American Civil Liberties Union
 Jacqueline Lenmark, Montana Coalition of Privacy
 and Free Expression
 Joe Mazurek, Lobbyist for the City of Great Falls

Opening Statement by Sponsor:

SEN. JACK WELLS, SD 14, Gallatin County stated that this bill is required because we need to put some controls on the internet access in public libraries. There has been a growing trend on the internet where some obscenity has been appearing on the internet and our young people are able to access that kind of material. In public libraries, where we fund these programs through public funds, we should provide some protection. Of the many protection programs already in place we tend to concentrate on physical protection yet the mental and emotional protection is just as important. This is a protection idea that will help protect the children against something that infects the mind.

Section 3 is the heart of the bill. The new section speaks to the limitations on the dissemination of material to minors and how that would be handled. He recommended one change which is found in Section 3, Subparagraph 1A, where it talks about statute 458206. **SEN. WELLS** recommended a definition of obscenity that is defined in our statute of 458201, Subparagraph 2. That statute does define obscenity and would be most appropriate shown here. The remainder of section three of the bill tells how libraries can implement some proper controls on this material on the internet. Section 4 points out that if libraries choose not to implement proper controls, then there could be some financial consequences.

SEN. WELLS pointed out that a number of states have implemented this kind of a law or have this kind of legislation pending. It is something that is not new or innovative in the sense that Montana is the first.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 5}

Proponents' Testimony:

Harris Himes, representing himself, spoke in support of SB 139 and submitted written testimony, **EXHIBIT(eds11a01)**.

Dr. Mark Mozer, clinical psychologist from Helena, testified in support of SB 139 and submitted written testimony, **EXHIBIT(eds11a02)**.

Jenniger Coleman, spoke for herself and testified in support of SB 139 and submitted written testimony, **EXHIBIT(eds11a03)**.

Julie Millam, Executive Director of Christian Coalition of Montana, stated that the protection of children, families and society in general from the serious harms of pornography and especially obscene materials is a top priority of Christian Coalition, both nationally and a state level. She stated that internet pornography is now estimated at 1.5 billion dollars per year and growing. The access via the internet, to porno websites, is turning America's public libraries into virtual peep shows, open to children and funded by taxpayers. Family research council with the help of David Byrd, a public librarian who shares the concerns of the Christian Coalition, mailed out more than 14,000 Freedom of Information Act requests to the nations 9,767 public library systems requesting copies of complaints, reports and other documentation of incidents involving patrons accessing pornography. The response uncovered over 2000 incidences of patrons, many of them children accessing pornography, obscenity and child porn in the nations public libraries. Analysis of computer logs in just three urban libraries revealed thousands of incidences that went unreported, indicating that the 2,000 figure represented only a fraction of total incidences world wide. Recently seven Minneapolis librarians filed a complaint with the EEOC because of hostile and offensive working environments caused by daily exposure of internet porn. **Ms. Millam** stated that a library is not a public forum open to all forms of expression. There is no constitutional requirement for government to provide access to legal pornography in a library simply because it provides internet access. Minimizing access to porn and avoidance of a creation of a sexually hostile environment is a compelling

government interest. Filtering is the answer to this ever growing problem. While we remain on the cutting edge of technology, we must always strive to be on the cutting edge of protection for our most vulnerable members of society.

Karen Pfaehler, spoke for herself and testified in support of SB 139. She provided written testimony, **EXHIBIT(eds11a04)**.

{Tape : 1; Side : A; Approx. Time Counter : 5 - 31}

Dallas Erickson, Montana Citizens for Decency Through Law, spoke in support of SB 139 and submitted written testimony, **EXHIBIT(eds11a05)**.

Mr. Erickson also submitted additional information, **EXHIBIT(eds11a06)**.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 10}

Opponents' Testimony:

CHAIRMAN GLASER entered into testimony a letter from **Jim Heckel, director of the Great Falls Public Library**. **Mr. Heckel** gave his testimony, from this letter, later in the hearing.

Dr. Karen Strege, Director of the Montana State Library, spoke in opposition to SB 139 and submitted written testimony, **EXHIBIT(eds11a07)**. She also submitted addition information, **EXHIBIT(eds11a08)**.

Lorraine Biggs-Gallik, Anaconda Library Board, spoke in opposition of SB 139 and offered written testimony, **EXHIBIT(eds11a09)**. She also submitted a copy of the policy for internet use from the Hearst Free Library of Anaconda, MT, **EXHIBIT(eds11a10)**.

Paul V. Beausoleil, County Commissioner of Deer Lodge County, spoke in opposition to SB 139. He submitted written testimony, **EXHIBIT(eds11a11)**.

Jim Heckel, Director of the Great Falls Public Library, spoke in opposition of SB 139 and submitted written testimony, **EXHIBIT(eds11a12)**. He also submitted additional information, **EXHIBIT(eds11a13)**.

Lois Fitzpatrick, Montana Library Association, spoke in opposition to SB 139. She submitted written testimony, **EXHIBIT(eds11a14)**.

Beth Brenneman, American Civil Liberties Union, spoke in opposition to SB 139 for the reasons given by the afore mentioned opponents and simply because it is misleading. She referred to Section 3, Subsection 2, that indicates a public library may comply with the law by using blocking software which sets them up for constitutional challenges. If a public library has only one computer, using filtering software will be the basis of a lawsuit for the violation of first amendment rights. Even if there were more than one computer in the library, the use of filtering software, on any of the library computers, may violate the first amendment rights of minors and adults. To avoid confusion and to avoid setting up a protection in the statute, that will subject a library to liability for violation of constitutional right, she asked that the committee vote against this bill.

Jaqueline Lenmark, the Montana Coalition for Privacy and Free Expression, spoke in opposition to SB 139. **Ms. Lenmark** concurred with the other opponents of the bill and asked the committee to consider what has been emphasized about local control. The public libraries are the place where information should be the most accessible for our business owners, for the individual citizens of our state, and for our parents who guide their children in the use of the library. It should be absolutely free and any restriction to that access should be narrowly tailored to meet the needs of the particular community that the library serves. That is consistent with Montana's Criminal Code and the policies that have been described in earlier testimony by the various librarians and professionals that have opposed this bill.

Joe Mazurek, representing the city of Great Falls, spoke in opposition to SB 139. He agreed with the policies of local control. They meet the standards that are appropriate to the communities and are working well. The standards may depend on the facilities available. He is concerned that filters in the library do not work well, in fact block material that might otherwise be available. This is a process adopted by local entities that is working well in our communities. A mandate, from the state, that certain prescribed procedures be taken is not wise and may result in claims, not only against local libraries but also against the state.

{Tape : 1; Side : B; Approx. Time Counter : 10 - 31}
{Tape : 2; Side : A; Approx. Time Counter : 0 - 3}

Informational Testimony: None

Questions from Committee Members and Responses:

SEN. JIM ELLIOT asked **SEN. WELLS** if he felt local libraries were not doing their job. **SEN. WELLS** responded that library boards are not doing their job well enough. He referred to the testimony of the opponents that it varies from community to community, board to board. It is very likely that some of these community boards are doing a fine job. He stated that he had not researched all the policies of all the different libraries but it is his feeling that something from the state, in the way of direction, would lead those that aren't doing quite as good a job to improve.

SEN. ELLIOT asked for clarification of **SEN. WELLS** as to whether he could name those boards that are not doing their job. **SEN. WELLS** responded that he could not name specific boards that are or are not doing their jobs.

SEN. ELLIOT asked **Mrs. Fitzpatrick** if there was any library in the state of Montana that has not developed an internet use policy. **Mrs. Fitzpatrick** believes that 78 of 79 public libraries do have acceptable use policies. The one library that hasn't does not have the internet. Two years ago she did some research on how many libraries, in Montana, had acceptable use policies and at that point almost every academic, public and special use library did have acceptable use policies. She offered to update that research.

SEN. JOHN COBB asked for clarification on the wording in the bill that referred to libraries setting a policy that it may implement a filter in order to qualify under this statute. **Mrs. Fitzpatrick** agreed that a library may filter. Since all libraries already have acceptable use policies and do consider whether or not to filter on the local level she feels that this bill is redundant.

SEN. EDWARD BUTCHER inquired of **Mrs. Fitzpatrick** if there was anything in this bill that would give a library board, that is wanting to do something, a statutory basis so when someone decides to sue for some reason that the library board is not running for cover because there is nothing to protect them. Is there anything wrong with this bill that would cause any undue hardship if a library is already doing it? **Mrs. Fitzpatrick** responded that she does not believe that we need this bill. The State Library Commission has worked very hard and long with all different types of libraries, not just public libraries, on how to formulate good usable acceptable use policies. She does not think the ACLU would come along and sue libraries on behalf of this.

SEN. BUTCHER asked what the harm would be if the bill is put in if the libraries are already doing it. He asked if libraries wouldn't like to have some sort of legal basis behind what they are doing. **Mrs. Fitzpatrick** asked if **SEN. BUTCHER** would redirect the question to **Karen Strege**. **Dr. Strege** referred to local statute governing library board, 221304, which gives the power to library boards to set rules and policies for the library, regarding the operation and use of the library for it's patrons. They have the legal authority to set filters, not to set filters, and to set policy. **SEN. BUTCHER** responded that although that may be true, if there is a concern, again, what harm does it do to you and your policy making simply to give you a legal basis for what you are already apparently doing. **Dr. Strege** responded that it's already a law governing library boards and also, this sets up a must. She referred to page 2, line 6, that says, they must prevent minors from using library computers equipment and communication services to send, receive, view, and download obscene material. There is no policy and no filter that will allow library boards to prohibit this kind of activity. The state library tries to help local libraries but it is impossible to do so.

SEN. BUTCHER asked **Dr. Strege** if she felt there could be some language in this that would refer to the computers, give the library a little more latitude but at least address it again for those wishing to have a legal basis for their actions. **Dr. Strege** responded that it would be, in her opinion, that the statutes on the books already give them that power and they could use that as a firm base to make those policy decisions and that this bill was not needed.

SEN. DALE BERRY inquired as to what percentage of parents go with their children to use the library. **Dr. Strege** responded that, in her experience, the smaller the child the more likely a parent would be with them. Teenagers like to do things independently, without their parents, and are less likely to have their parents with them.

SEN. DON RYAN asked **Jim Heckel** to explain how the filters work. **Mr. Heckel** explained that currently there are experiments on software which will block sites based on photographic images. Most sites work on algorithms developed to address contextual words or phrases.

SEN. MIKE SPRAGUE asked if an issue such as this ever been brought to a local vote. To the knowledge of **Mr. Heckel**, in Montana, this has not happened. **SEN. SPRAGUE** questioned local control when boards are selected and appointed but not voted on.

Mr. Heckel responded that he was perfectly comfortable with allowing a local vote on policy issue.

SEN. SPRAGUE wondered if a library card would have the date of the customer which would show the age of the user. **Mr. Heckel** responded that the information is not on the card itself but in the record which is kept on the computer. **SEN. SPRAGUE** inquired about a youngster, with a library card, doing a swipe to get processed to use the computer and whether this would be separated out by age group. **Mr. Heckel** responded that this could be possible and easy to do.

SEN. MIGNON WATERMAN asked the sponsor if this applied to school libraries as well as public libraries. **SEN. WELLS** explained that when drafting the bill, that he did not ask that school libraries be included. He thought there was another bill in the house that would pertain to school issues. **SEN. WATERMAN** asked for clarification when the school library is also the public library. Her understanding is that there is federal law that allows parents access to their children's records in school libraries but it is prohibited in public libraries. **SEN. WELLS** responded that it would be addressed in SB 140.

SEN. RYAN asked the sponsor about the possibility of a library adopting a policy to protect themselves under this bill, of putting a filter on, and if it would meet all the obligations that the library has to protect the child. **SEN. WELLS** thinks that would be the first step, however, if the filter was not working someone could point out that the library would have to do something different in the policy. **SEN. RYAN** referred to the error rates of different blockers. This is something that would put our librarians and library boards to lawsuits if they pick a filter that doesn't work. **SEN. WELLS** said that if they pick an unreliable filter, knowing full well that there are better filters, then obviously they have not done their job. If they do the best they can and get the best filter that is possible then we can not expect any more from them.

SEN. SPRAGUE wondered if the sponsor would be opposed to an amendment that would give local jurisdictions a vote of the people. **SEN. WELLS** stated that the local board would be given the mandate to set the policy and work in their program. That gives them the local control to do that. It could be stated in their local board policy rules rather than here in statute.

{Tape : 2; Side : A; Approx. Time Counter : 3 - 28}

Closing by Sponsor:

SEN. WELLS closed on SB 139. He found it shocking that fifty percent of our prisoners are sexual offenders and feels it is a sign of the times. He responded to the comments from many of the opponents, that thought this bill is unnecessary, saying that we already have policies to do this. If we have policies to do this then the bill wouldn't require them to do anything but to go back home and say that they meet the requirements of that bill.

{Tape : 2; Side : A; Approx. Time Counter : 28 - 31}

HEARING ON SB 140

Sponsor: SEN. JACK WELLS, SD 14, GALLATIN COUNTY

Proponents: Steve White, Montana Coalition of Home Educators
Mrs. Annette Olson, Self
REP. DARREL ADAMS, HD 84
Julie Millam, Christian Coalition of Montana
Dallas Erickson, Montana Citizens for Decency
Through Law
Harris Himes

Opponents: Lois Fitzpatrick, Montana Library Association
Haley Swain, Self
Dr. Karen Strege, Director of the Montana State
Library
Jacqueline Lenmarek, Montana Coalition for Privacy
and Free Expression
Joe Mazurek, Lobbyist for the city of Great Falls
Beth Brenneman, American Civil Liberties Union

Opening Statement by Sponsor:

SEN. JACK WELLS stated that the purpose of the bill was to provide library confidentiality rules, to allow parents or legal guardians of the child to request and to receive information from the public library. Several years ago, after the last session, a lady in Bozeman called him up very angry and distressed. She had received a notice from the public library that her son had an overdue book. Her son was twelve years old at the time. She called the library to get information on the overdue book and the librarian advised her that she was not permitted to know which books her son had checked out from the library. That was his right to privacy. The librarian quoted from the American Library Association Rules and Rights of Privacy.

The basic statute applies across the board to libraries. He stated that he is talking about public libraries, funded with

public money. The rhetoric heard from the schools is that we want parents involved and this bill would allow parents to do just that. In answer to those that would say that this would bring undue hardships on the library to keep these records **SEN. WELLS** responded that the bill is not meant to deal with current material.

He also addressed **SEN. WATERMAN'S** question, during the discussion of SB 139, about the cross over of these two libraries. **SEN. WELLS** felt that in a town like Townsend, where the school library is also the public library, the library should be considered a public library and should be under the rules and regulations of any bills or laws that apply to public libraries. Other things that apply to school libraries would then apply there. She is also correct when she mentioned that federal law requires school libraries to give this kind of information to parents if they ask.

Proponents' Testimony:

Steve White, Montana Coalition of Home Educators, spoke in support of SB 140. Mr. White related a story, in regards to his son and their experience with the Bozeman library. His wife ended up playing charades with the librarian to get information because the librarian would not give them any information about a book that they thought was overdue. Mr. White encouraged the committee to support this bill.

Mrs. Annette Olson, representing herself, supported SB 140 and submitted written testimony, **EXHIBIT(eds11a15)**.

REP. DARREL ADAMS, HD 84 spoke in support of SB 140. He asked that the committee members think about this question. Whenever anyone is trying to hide anything...why?

Julie Millam, Christian Coalition of Montana, applauded **SEN. WELLS** for bringing this legislation. Parents deserve the right to access their children's library records. The role of parents needs to be reinforced in today's society. Parents have a fundamental right to protect and direct the upbringing of their children and public libraries have no business excluding parents from seeking to protect their children. Libraries receive state and federal funds that are paid by the parents, not the child so they in turn should be responsible back to the taxpayers. The one thing we constantly hear is that we want parents to get involved. Here is a chance to give parents that are concerned enough about their children an opportunity to be informed about what their children are doing, especially when they are not present. An informed parent can head off problems at the pass.

Libraries should be held accountable to parents who request information. We should encourage and applaud parents who care enough to seek out information that can help them better raise their children. Therefore, allowing parental involvement is better for our children and on behalf of Christian Coalition we urge you to support this bill.

Dallas Erickson, Montana Citizens for the Decency Through Law, spoke in support of SB 140. Some material is harmful to children and common sense tells us that parents that have to deal with the problems caused by that material should have access to the children's records. This bill shows a situation where the government thinks it is better than the parents and can handle things better and he recommended a do pass on SB 140.

Harris Himes, representing himself, spoke in support for SB 140. He stated that the standards set by the American Library Association flies right in the face of what the Supreme Court has said. He referred to the court case of Ginsberg vs. New York that says that the parent has the primary responsibility for their children. The library association is setting itself above what our Supreme Court is saying. That should not happen. A parent has a responsibility for that child and to be denied information about what the child has been reading is nonsense.

Opponents' Testimony:

Lois Fitzpatrick, Montana Library Association, spoke in opposition to SB 140. She submitted written testimony, **EXHIBIT (eds11a16)**. She also passed out some fact sheets concerning this bill, **EXHIBIT (eds11a17)**.

Haley Swain, representing herself, spoke in opposition to SB 140. She urged the Committee to vote no on SB 140 because it is an invasion of privacy for kids. It is unnecessary because her mom reads with her and they have good communication, talking about what she reads. We don't need this law. Let parents and their kids take care of this situation.

Dr. Karen Strege, Director of the Montana State Library, spoke in opposition to SB 140. She directed attention to the bill on line 14 where she reiterated what **Mrs. Fitzpatrick** said about a child relinquishing their rights in the library to their parents. The parent could then see what the child has checked out. Line 25 states that library records may be disclosed to the extent necessary to return overdue or stolen material or collect fines. This means that the library can give the information to parents once the material is overdue, lost or otherwise not available to the library. This is advice consistently given to libraries.

Jaqueline Lenmark, Montana Coalition for Privacy and Free Expression, asked that this bill receive a do not pass recommendation.

Joe Mazurek, Lobbyist for the city of Great Falls, opposed SB 140 for the reasons stated by the state librarian and **Mrs. Fitzpatrick**.

Beth Brenneman, American Civil Liberties Union spoke in opposition to SB 140. The current law strikes a balance between the constitutional balance of patrons and the needs of library to determine where their materials are. As mentioned before, there is a Montana Constitutional protection of minors that gives minors the same rights as adults unless a measure is passed for their protection. She stated that she had not heard any testimony that established a necessity for minor's protections, rather something convenient for parents. She suggested that parents that have a relationship with their children don't need this bill.

{Tape : 2; Side : B; Approx. Time Counter : 0 - 27}

Informational Testimony: None

Questions from Committee Members and Responses:

SEN ALVIN ELLIS inquired of **Mrs. Fitzpatrick** if she would advocate changing the law so that a minor could have access to alcohol or tobacco. **Mrs. Fitzpatrick** stated that she would not advocate this. Those were set up for the protection of the child and at this point she stated that she did not see where this bill would protect the child except from getting information.

SEN. ELLIS, asked her if she didn't think access to pornographic information is harmful to a child. **Mrs. Fitzpatrick** felt that the issues are being confused. They are talking about check out of library books that does not include websites and she also stated that libraries do have selection policies. She stated that she does not believe that children need protection from things that are in libraries. This is a right of a child to seek information and to have access to that information.

SEN. ELLIS asked whether or not pornography, like beauty, is in the eye of the beholder. **Mrs. Fitzpatrick** responded that according to the Supreme Court, that is true. We do use community standards. Every library does have a collection management policy which is based on their community standards. Her belief is that this would protect the child.

{Tape : 2; Side : B; Approx. Time Counter : 27 - 32}

SEN. SPRAGUE asked that since the parent has to give their permission to get a library card, would it be relatively easy for the library to have a policy that the parent would be made aware of the fact that a child could give the parent permission to have access to his library records at that time. **Dr. Strege** stated that some libraries do not require parental signatures for a minor to use the library.

SEN. SPRAGUE asked if this was a local policy and not a state wide rule. **Dr. Strege** agreed that it does seem simple but again referred to the Constitution that says that minors have same rights as adults unless otherwise taken away in other parts of the law such as alcohol or tobacco. The attorney at the State Library says that minors have the right to use the library, under our Constitution. It may be a constitutional issue that we can not require libraries to require parents to sign for their minors.

SEN. BUTCHER questioned the fact that parents have no rights but all the responsibilities. For example if the book is lost, the parent is responsible for paying for the lost book. He asked if this meant the parents would no longer have that responsibility. **Dr. Strege** agreed that it is a complex issue. She stated that the parents do not have to sign, according to their attorneys, for their minors to use the library. Minors at any time, according to Montana's contract law, which is not in library code, can disavow any contract.

SEN. ELLINGSON asked **Joe Mazurek** to clarify Subsection B. It allows disclosure, per written request, from the parent or legal guardian. **SEN. ELLINGSON** wanted to know who could give written consent to the release other than the minor child and if that is the case isn't that already covered in subsection A. **Mr. Mazurek** stated that Subsection A gives that authority to the person that actually holds the card, which would be the child.

SEN ELLINGSON stated that before a written request would be honored under subsection B, there must be forms to give the written consent. He inquired of **Mr. Mazurek** as to who would give the written consent. **Mr. Mazurek** explained that the right exists in the person who holds the card, in this instance the child. **Mr. Mazurek** stated that it is not clear, although obviously, that was what the sponsor intended but he's not sure that the language accomplishes that.

SEN. BUTCHER questioned whether this should be clearer.

Mr. Mazurek suggested that the language be made clearer. That you are giving the right to the parent to inspect this record.

SEN SPRAGUE asked if **Haley Swain** was still in the room and commended her for her bravery and thanked her for coming.

{Tape : 3; Side : A; Approx. Time Counter : 0 - 11}

Closing by Sponsor:

SEN. JACK WELLS closed on SB 140. **SEN. WELLS** said whole key to this bill was to protect children parents have a God-given fundamental right to raise their children in the best manner possible and to monitor what their children are reading and looking at, he stated.

{Tape : 3; Side : A; Approx. Time Counter : 11 - 13}

HEARING ON SB 231

Sponsor: **SEN. DUANE GRIMES, SD 20, Clancy**

Proponents: **Lance Melton, Montana School Board Association**
Wayne Buchanan, Board of Public Education
Loran Frazier, School Administrators of Montana
Dave Puyear, Montana Rural Education Association
Bruce Messinger, Superintendent of Schools-Helena

Opponents: None

Opening Statement by Sponsor:

SEN. DUANE GRIMES, SD 20, stated that SB 231 can be characterized as a clarification of existing law that states that there are some opportunities for learning through electronic means. The purpose of this bill is to provide a mechanism for school districts to provide educational programs in a much more flexible environment than they can today. SB 231 would clarify that electronic based learning in K-12 is permitted by law. The Office of Public Instruction has a rule (1020102) which limits schooling provided to home bound children. This provides local school districts with some wonderful alternatives and opportunities to educate kids. It is a policy decision on our part but will be up to the local administrators. This does not specify exactly how the electronic education would take place. It could possibly take place through fax, modem and copiers, **EXHIBIT(eds11a18), EXHIBIT(eds11a19).**

Proponents' Testimony:

Lance Melton, Montana School Boards Association, supported SB 231, which was introduced on the behalf of the Montana School Boards Association. It is an important principle among the membership of MSBA. Since 1997 school districts have increased their technological capabilities due to money appropriated by the legislature and federal monies from the E-rate discount thus increasing their capabilities to serve distance learning. The only way that a school district can provide education to someone that is at home is if they are at home with a certified medical illness. It will allow schools to provide education in a more flexible format than they currently can. It has potential in terms of offering alternative education to certain populations within the school.

Wayne Buchanan, Board of Public Education, supported SB 231. **Mr. Buchanan** testified that he has done a study on internet education in the country. When he began that study he felt that internet education wasn't a good idea. After the study he found that the world of internet education was a very positive addition to our schools across the state. The virtual classroom provides many more advantages that we can't get in the regular classroom. Classes can be made up of students from all over the world. The bill puts smaller schools, in the state, on an equal footing with the larger schools.

Loran Frazier, School Administrators of Montana, supported SB 231. He stated that this is the first piece of legislation on virtual learning. He stated that next year at this time there could be enough material that there may be a virtual high school offering in the state of Montana. He reported that they have applied for a Gates Grant with the School Administrators in conjunction with the University of Montana. They are hoping through the Gates Grant that they will train administrators on how to evaluate much of this virtual learning. He also reported that another grant will follow to begin to train teachers on what is available.

Dave Puyear, Montana Rural Education Association, supported SB 231. He stated that it creates a great deal of flexibility for the rural schools. It is cost effective by helping schools to do things with their children that they have wanted to do. Trustees are still in charge, making the local control decision. Certified teachers must be involved in the curriculum and the supervision of that curriculum.

Bruce Messinger, Superintendent of the Helena Public Schools, rose in support of SB 231. He stated that this expands the

opportunities for students. He encouraged that teachers be certified and experienced in the use of the internet.

{Tape : 3; Side : A; Approx. Time Counter : 13 - 31}

Eric Feaver, Montana Education Association/Montana Federation of Teachers, supported SB 231. He stated that they do want to open up the school districts to the students that reside in that district. Electronic Education provides that opportunity.

Bill Cooper, Office of Public Instruction, supported SB 231. He felt they were entering into new territory but the language that talked about the supervision of the approved curriculum and the control of the school district was the language that was needed.

{Tape : 3; Side : B; Approx. Time Counter : 0 - 3}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

SEN. DEBBIE SHEA referred to **Loran Frazier's** testimony and asked if there was anything on the college level to train teachers.

Mr. Frazier responded that the grant allowed the faculty at the education departments at the University of Montana and Montana State University be trained to train administrators and teachers.

SEN. SHEA asked if there was a plan in place to make sure that this information be disseminated to would be-teachers. **Mr. Frazier** responded that there is, by training the present faculties at the university level. There will another phase of the Gate's program that will be geared to teaching teachers.

SEN. BUTCHER asked if it was possible to pick up students from out of state. **SEN. GRIMES** responded that all existing statues apply. The question was redirected to **Lance Melton**. **Mr. Melton** stated that federal law says that out of district students must pay tuition and there would be no subsidy to that education by the state of Montana.

SEN. KITZENBERG asked about the effective date of this bill. **Mr. Melton** responded that the reason the effective date was left the way it was is because of the timing involved with the Office of Public Instruction and the Board of Education developing rules on this. It would be reasonable to have an effective day of July

first. Distance learning rules are set forth in the accreditation standards.

SEN. BOHLINGER questioned the mechanics of the distribution of ANB if a student were to receive instruction from several different schools. **SEN. GRIMES** responded that there would be an issue that would have to be taken up in the rules.

SEN. BOHLINGER stated that we should give some thought on how we should distribute funds to schools. **SEN. GRIMES** stated that the proponents of the bill will be the ones responsible for implementing that.

SEN. ELLIS asked for clarification on whether the provider of the course would get credit or the school district. **Mr. Melton** responded that the district would be able to contract with an outside provider and the school district would collect the ANB and be responsible for providing the education in compliance with the Board of Public Education standards. The board's current distance learning standard says that you can have an outside party providing this information.

SEN. ELLIS asked for clarification on who would collect ANB. **Mr. Melton** stated that only the school district, as defined by law, can educate pupils in the public education system and collect ANB.

SEN. ELLIS asked if a student has to attend a school. **Mr. Melton** replied that a person does not have to physically attend but the person would be enrolled in the school.

SEN. ELLIS asked **Mr. Buchanan** if the rule on distance learning anticipates some of the questions that have been covered here. **Mr. Buchanan** stated that **Mr. Melton** hit on some of the key points. The school would have to collect the ANB. He referred to the Southern Regional Educational Board (SREB) rules and regulations regarding distance learning.

SEN. WATERMAN commented that, by rule, we can determine where a student lives. If a student takes five different courses from five different schools then how is each of those districts reimbursed for teaching the course. **Lance Melton** responded by giving examples of schools now involved with this process. The school district where the students is enrolled is the one that gets the ANB. The parent would decide which district their child would be enrolled in. The bill does provide flexibility for each district to contract with another school district for another curriculum.

SEN. WATERMAN asked **Mr. Melton** if the ANB would go to the home school and then they would pay another district, through a contract, to provide an out of district course. **Mr. Melton** stated that this would be correct.

SEN. WATERMAN asked if the rules state that the child has to physically reside in a district or if the parent could enroll the child in another district. **Mr. Melton** did not believe a parent could do that. Residency is determined according to where the parents reside. A child could go to another district according to that district's rules. Some would charge tuition, others may waive tuition.

SEN. WATERMAN asked if we need to repeal the definition of home bound students or is this compatible. **Mr. Melton** would expect that OPI would repeal that rule since they are a proponent of this bill.

SEN. WATERMAN asked if students in correctional facilities could enroll via distance learning and get credit either from their home facility or the district where the correctional facility is located. **Mr. Melton** stated that the county is responsible for the education of these students and he feels that this would improve the quality of education for those students in that setting.

SEN. WATERMAN asked whether or not students expelled from a district would be allowed under this bill to attend school and take classes. **Mr. Melton** responded that this was possible if a school district was willing to take students expelled in their previous districts. A student expelled from the home district could not attend, back in that district, without consent of the affected school district.

SEN. BUTCHER questioned whether or not we could simplify this whole thing if you divided up the ANB thus giving some competition between districts. **Mr. Melton** stated that it would be very difficult to regulate splitting up ANB.

{Tape : 3; Side : B; Approx. Time Counter : 3 - 30}

Closing by Sponsor:

SEN. GRIMES closed on SB 231. He stated that resources that are electronically available at this time are incredible. Image where we will be in another ten years. He urged support of SB 231.

ADJOURNMENT

Adjournment: 6:22 P.M.

SEN. BILL GLASER, Chairman

LINDA ASHWORTH, Secretary

BG/LA

EXHIBIT (eds11aad)